EMINENT DOMAIN—RAILROAD PROPERTY NOT TO BE CONDEMNED FOR STREET.—The city sought in the State court to condemn certain portions of railroad property adjoining three streets, unconnected and remote from each other, the purpose being to secure control of the railroad property. The property sought to be condemned was not in actual use, but was necessary for the railroad's use in the future. The railroad property was in the hands of a receiver appointed by a federal court The city based its claim mainly upon the fact that the railroad had ceased to operate and had forfeited its franchise under the terms thereof. *Held*, the railroad property cannot be condemned by the city. *In re 221st. Street in City of New York*, 190 N. Y. S. 234 (1921).

While the State legislature may constitutionally authorize the taking of property devoted to a public use for a different public use, it is the settle rule that a general delegation of the power of eminent domain to a municipal corporation does not authorize the taking of property already devoted to a public use, unless it can be shown clearly that the legislature intended such a taking. *Chicago, etc., R. Co.* v. *Williams*, 148 Fed. 442 (1906); *Plainfield-Union Water Co.* v. *Inhabitants of City of Plainfield*, 83 N. J. Law 332, 85 Atl. 321 (1912); *In re Saratoga Ave. In City of New York*, 226 N. Y. 128, 123 N. E. 197 (1919).

The use of property by a railroad is a use for a public purpose, and it is not essential that the property shall be actually in use if it will be needed for its purposes within a reasonable time in the future. *In re Application of Staten Island, etc., R. Co.*, 103 N. Y. 251, 8 N. E. 548 (1886); *In re East 161st. Street In City of New York*, 52 Misc. Rep. 596, 102 N. Y. S. 500 (1907); *In re Seneca Ave. In City of New York*, 98 Misc. Rep. 712, 163 N. Y. S. 503 (1917).

INTOXICATING LIQUORS—PROPERTY IN INTOXICATING LIQUORS—ONE WHO ENTERS BUILDING WITH INTENT TO TAKE INTOXICATING LIQUOR CANNOT BE CONVICTED OF BURGLARY.—Certain liquor containing alcohol in excess of the quantity permitted by law was manufactured for beverage purposes subsequently to the passage of the National Prohibition Act. The defendant, with the intent to steal the liquor, entered an outhouse, wherein it was stored. To an information charging the crime of burglary with intent to steal intoxicating liquor, the defendant demurred on the ground that such liquor cannot in legal contemplation be property, inasmuch as there cannot be ownership thereof, in view of the National Prohibition Act. *Held*, demurrer sustained. *People* v. *Spencer* (Cal.), 201 Pac. 130 (1921).

As authority for the instant holding the case of *People* v. *Caridis*, 29 Cal. App. 166, 154 Pac. 1061 (1915) was cited. But it is to be noted that in that case, although a demurrer to the information charging the crime of grand larceny for the theft of a lottery ticket was sustained, the court states that had the charge been petit larceny in keeping with the intrinsic worth of the ticket the demurrer would not have been allowed. As further authority it is contended that a defendant who broke and entered a stable with intent to steal a dog, could not be indicted for

burglary. *State* v. *Lymus*, 26 Ohio St. 400, 20 Am. Rep. 772 (1875). But see *contra*, *Harrington* v. *Miles*, 11 Kan. 480, 15 Am. Rep. 355 (1873) and note. The ancient common law view of insufficient property rights in dogs to sustain an indictment for larceny is now rejected under modern holdings even in the absence of statutes. 17 R. C. L. 32.

It is well established that burglary and larceny may be committed where personal property which is the subject of ownership is taken, and the fact that the property is kept for an unlawful purpose does not change the nature of the crime. Hence, larceny may be committed of property used for gaming purposes. *Bales* v. *State*, 3 W. Va. 685 (1868); *Smith* v. *State* (Ind.), 118 N. E. 954, L R. A. 1918D. 688 (1918). And it may be committed of a pistol, the sale of which is prohibited, thus preventing it from having a market value. *Osborne* v. *State*, 115 Tenn. 717, 92 S. W. 853, 5 Ann. Cas. 797 (1906); 17 R. C. L. 35. Likewise, money acquired by the illegal sale of intoxicating liquor is also the subject of larceny. *Commonwealth* v. *Rourke*, 10 Cush. (Mass.), 397 (1852). Nor is it any defense to an indictment for embezzlement to show that the property has been entrusted to the accused for an illegal purpose. *Commonweatlh* v. *Cooper*, 130 Mass. 285 (1881). The fact, that property is illegally held or used is immaterial on the question of whether it is a subject of larceny. 25 CYC. 13, note 20. Although liquor as an article of traffic is prohibited, and is liable when kept as such, to be seized and destroyed, nevertheless, until this is done, it is in its essential nature property; and it is no defense to an indictment for stealing such liquor that it is being kept in violation of law. *State* v. *May*, 20 Iowa 305 (1866); *Commonwealth* v. *Smith*, 129 Mass. 104 (1880); *Commonwealth* v. *Coffee*, 9 Gray (Mass.) 139 (1857). The fact that liquor is not the subject of lawful traffic, or that its sale is prohibited by law, does not deprive it of its character as "goods wares, or merchandise", and hence is the subject of burglary under a State statute. *Ellis* v. *Commonwealth* (Ky.), 217 S. W. 368 (1920); *Monty* v. *Arneson*, 25 Iowa 383 (1868).. Similarly as to larceny. *Mance* v. *State*, 5 Ga. App. 229, 62 S. E. 1053 (1908); *August* v. *State*, 11 Ga. App. 798, 76 S. E. 164 (1912). A State statute which declares liquor contraband and destroys all property rights of the possessor therein does not alter its inherent nature as personal property, and hence it may be the subject of robbery, irrespective of the purpose for which it is being kept or u ed. *Arner* v. *State* (Okl.), 19 Pac. 710 (1921). And for similar reasons outlawed liquor may be the subject of grand larceny. *State* v. *Donovan*, 108 Wash. 276, 183 Pac. 127 (1919). The protection placed around such contraband property is a matter of sound public policy. *Arner* v. *State*, *supra*; *Commonwealth* v. *Rourke*, *supra*. It is said that the law punisnes the larceny of property, not solely because of any rights of the proprietor, but also because of its own inherent legal right as property. *Commonwealth* v. *Rourke*, *supra*.

As bearing on the question of property rights in intoxicating liquors it is worthy of notice that title 11, section 25 of the National Prohibition Act provides that it shall be unlawful to have or possess any liquor or

property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. Apparently no federal cases have arisen upon the construction of the latter part of this section. But admittedly this section does not apply to liquors held in storage by their owner and lawfully acquired prior to the enactment of the National Prohibition Act to be used by the owner and his family, as to which there is a sufficient claim of property to sustain an indictment for burglary or larceny. *Street* v. *Lincoln Safe Dep. Co.*, 254 U. S. 88, 10 A. L. R. 1548, 7 VA. LAW REV. 400 (1921). That is to say, the Eighteenth Amendment and the National Prohibition Act do not destroy property rights in intoxicating liquors lawfully acquired before the passage of the Volstead Act, and do not forbid the lawful possession thereof. *Hall* v. *Moran* (Fla.), 89 So. 104 (1921); section 33 of the National Prohibition Act. And contrary to the holding of the instant case it has been held that although liquor is contraband and without value under the National Prohibition Act unless purchased and held under a government permit it may nevertheless be the subject of burglary. *People* v. *Wilson* (Ill.), 131 N. E. 609 (1921)

MARRIAGE AND DIVORCE—RECOGNITION OF FOREIGN DIVORCE BY MATRIMONIAL DOMICIL.—The defendant and Lescher were married and cohabited in Missouri. Later they moved to Texas, which was their last matrimonial domicil. After two years, Lescher left the defendant and went to Nevada. The defendant never went to Nevada. Lescher obtained a divorce in Nevada upon constructive service of process upon the defendant, who neither answered nor appeared. The defendant then removed to Washington, D. C. where she married the plaintiff, a citizen of New York. A few days after this marriage, the parties separated and have never since lived together. The plaintiff then brought this action in a New York court to annul his marriage with the defendant on the grounds that the defendant's previous marriage was still in effect. *Held*, the validity of the second marriage depends upon the law of the domicil of the defendant when it occurred; the evidence not showing clearly how the Texas Courts ruled on such a divorce, a new trial was ordered to determine how Texas regards such a decree. *Ball* v. *Cross* (N. Y.), 132 N. E. 106 (1921).

In general, while every State has the right to determine the status of its own citizens, it cannot control or regulate the status of citizens of another State. It will be seen, however, upon reviewing the authorities upon questions of foreign divorce, that the controlling factor is domicil, and the validity of a foreign divorce may at any time be made the subject of inquiry upon the question of whether the court granting the divorce had jurisdiction. *Andrews* v. *Andrews*, 188 U. S. 14 (1903); *Reed* v. *Reed*, 52 Mich. 117, 17 N. W. 720, 50 Am. Rep. 247 (1883).

Where both parties are domiciled in the State granting the decree, proper jurisdiction is conferred on that State and the divorce will be valid everywhere. *Bater* v. *Bater*, 4 Ann. Cas. 854 (1906); see also *Cheely* v. *Clayton*, 110 U. S. 701 (1884).